

damages allowing a court to award damages in the amount of \$250,000 per infringed work where the infringement is part of a willful and repeated pattern or practice of infringement. The entire "pattern and practice" provision, which originated in the House, has been removed from the version of S. 1257 sent back to the Senate.

Second, the original House version of this legislation provided a direction to the Sentencing Commission to amend the guidelines to provide an enhancement based upon the retail price of the legitimate items that are infringed and the quantity of the infringing items. I was concerned that this direction would require the Commission and, ultimately, sentencing judges to treat similarly a wide variety of infringement crimes, no matter the type and magnitude of harm. This was a problem we avoided in the carefully crafted Sentencing Commission directive originally passed as part of the No Electronic Theft Act. Consequently, the version of S. 1257 passed by the Senate in July did not include the directive to the Sentencing Commission. The House then returned S. 1257 with the same problematic directive to the Sentencing Commission.

I appreciate that my House colleagues and interested stakeholders have worked over the past months to address my concerns over the breadth of the proposed directive to the Sentencing Commission, and to find a better definition of the categories of cases in which it would be appropriate to compute the applicable sentencing guideline based upon the retail value of the infringed upon item. A better solution than the one contained in the No Electronic Theft Act remains elusive, however.

For example, one recent proposal seeks to add to S. 1257 a direction to the Sentencing Commission to enhance the guideline offense level for copyright and trademark infringements based upon the retail price of the legitimate products multiplied by the quantity of the infringing products, except where "the infringing products are substantially inferior to the infringed upon products and there is substantial price disparity between the legitimate products and the infringing products." This proposed direction appears to be under-inclusive since it would not allow a guideline enhancement in cases where fake goods are passed off as the real item to unsuspecting consumers, even though this is clearly a situation in which the Commission may decide to provide an enhancement.

In view of the fact that the full Sentencing Commission has not had an opportunity for the past two years to consider and implement the original direction in the No Electronic Theft Act, passing a new and flawed directive appears to be both unnecessary and unwise. This is particularly the case since the new Commissioners have already indicated a willingness to consider this issue promptly. In response to ques-

tions posed at their confirmation hearings, each of the nominated Sentencing Commissioners indicated that they would make this issue a priority. For example, Judge William Sessions of the District of Vermont specifically noted that:

If confirmed, our first task must be to address Congress' longstanding directives, including implementation of the guidelines pursuant to the NET Act. Congress directed the Sentencing Commission to fashion guidelines under the NET Act that are sufficiently severe to deter such criminal activity. I personally favor addressing penalties under this statute expeditiously.

I fully concur in the judgment of Chairman HATCH that the Sentencing Commission directive provision added by the House and to send, again, S. 1257 to the House for action.

This bill represents an improvement in current copyright law, and I hope that it will soon be sent to the President for enactment.

TO AMEND THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

Ms. COLLINS. Mr. President, I ask unanimous consent the Agriculture Committee be discharged from further consideration of S. 961, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 961) to amend the Consolidated Farm and Rural Development Act to improve shared appreciation arrangements.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2789

(Purpose: To provide a substitute amendment)

Ms. COLLINS. Mr. President, there is a substitute amendment at the desk submitted by Senator BURNS, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS] for Mr. BURNS, proposes an amendment numbered 2789.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHARED APPRECIATION ARRANGEMENTS.

(a) IN GENERAL.—Section 353(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(e)) is amended by striking paragraph (2) and inserting the following:

"(2) TERMS.—A shared appreciation agreement entered into by a borrower under this subsection shall—

"(A) have a term not to exceed 10 years;

"(B) provide for recapture based on the difference between—

"(i) the appraised value of the real security property at the time of restructuring; and

"(ii) that value at the time of recapture, except that that value shall not include the value of any capital improvements made to the real security property by the borrower after the time of restructuring; and

"(C) allow the borrower to obtain a loan, in addition to any other outstanding loans under this title, to pay any amounts due on a shared appreciation agreement, at a rate of interest that is not greater than the rate of interest on outstanding marketable obligations of the United States of a maturity comparable to that of the loan."

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a shared appreciation arrangement entered into under section 353(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(e)) that matures on or after the date of enactment of this Act.

Ms. COLLINS. Mr. President, I ask unanimous consent the amendment be agreed to, the bill be read the third time and passed as amended, the motion to reconsider be laid upon the table, and that any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2789) was agreed to.

The bill (S. 961), as amended, was read the third time and passed, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

COPYRIGHT DAMAGES IMPROVEMENT ACT OF 1999

Ms. COLLINS. I ask unanimous consent the Chair lay before the Senate a message from the House to accompany S. 1257.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1257) entitled "An Act to amend statutory damages provisions of title 17, United States Code", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Damages Improvement Act of 1999".

SEC. 2. STATUTORY DAMAGES ENHANCEMENT.

Section 504(c) of title 17, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "\$500" and inserting "\$750"; and

(B) by striking "\$20,000" and inserting "\$30,000"; and

(2) in paragraph (2), by striking "\$100,000" and inserting "\$150,000".

SEC. 3. SENTENCING COMMISSION GUIDELINES.

Section 2(g) of the No Electronic Theft (NET) Act (28 U.S.C. 994 note) is amended by striking paragraph (2) and inserting the following:

"(2) In implementing paragraph (1), the Sentencing Commission shall amend the guideline applicable to criminal infringement of a copyright or trademark to provide an enhancement based upon the retail price of the legitimate items that are infringed upon and the quantity of the infringing items. To the extent the conduct involves a violation of section 2319A of title 18, United States Code, the enhancement shall be based upon the retail price of the infringing items and the quantity of the infringing items.

"(3) Paragraph (1) shall be implemented not later than 3 months after the later of—

"(A) the first day occurring after May 20, 1999; or

"(B) the first day after the date of the enactment of this paragraph,